IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29 .01.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.13505 of 2003

A.Francis Walter ... Petitioner

Vs.

The Chairman,
Tamilnadu Slum Clearance Board,
Chennai - 600 005. ... Respondent

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

* * *

For petitioner : Mr.R.Muthukannu
For respondents : Mr.J.Lenin

* * *

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings No.J1/9143/2003, dated 08.04.2003, of the respondent herein and quash the same in so far as it relates to the non-inclusion of the name of the petitioner in the panel for the year 2003.

2.Heard the learned counsel for the petitioner as well as for the respondent.

3.The brief facts of the case, as stated by the petitioner, are as follows:-

It is submitted that the petitioner is a B.E. Graduate in Civil Engineering and he had joined the service in the respondent Tamil Nadu Slum Clearance Board, on 03.08.1979, as an Assistant Engineer and subsequently promoted to the post of Assistant Executive Engineer, on 10.09.1984, and he has been working as such. The next post to which the petitioner could be promoted is the post of Executive Engineer, as per the revised panel of seniority issued by the board, on 24.03.2003. The petitioner's name was placed against Sl.No.14. The Board in its resolution, dated 28.03.2003, had decided to select five names of Assistant Executive Engineers for inclusion in the panel for the year 2003, for promotion to the post of Executive Engineer. Pursuant to the said decision, the Board in its proceedings No.J1/9143/2003, dated 08.04.2003, approved the panel consisting of five Assistant Executive

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Engineers in which two persons who are juniors to the petitioner have been included. However, with regard to the petitioner, it had been stated that due to the pendency of the charges framed under Rule 8(ii) of Tamil Nadu Slum Clearance Board (D&A) Rules,1972, the petitioner's name could not be included in the panel for promotion. The inclusion of the petitioner's name was deferred until the finalisation of the disciplinary proceedings. It has also been submitted that two sets of charges that were pending against the petitioner were for alleged occurrence related to the period 1986-87 and 1991-1992, respectively. After the charges were framed, an enquiry was conducted against the petitioner. The Enquiry Officer had also submitted a report holding that the charges were not proved. Therefore, a de-novo enquiry was conducted by another Enquiry Officer who had submitted his report after completing the enquiry. Thereafter, no further action had been taken. However, the petitioner's name had not been taken into consideration for being included in the panel for promotion. Therefore, the petitioner had come before this Court by way of a writ petition under Article 226 of the Constitution of India.

4.The learned counsel appearing on behalf of the petitioner had submitted that the non-inclusion of the name of the petitioner in the panel for the year 2003 for the promotion to the post of Executive Engineer, is illegal and unsustainable in law. The reason stated in the impugned proceedings is that the petitioner's name was not included in the panel for promotion due to the pendency of charges framed under Rule 8(ii) of Tamil Nadu Slum Clearance Board (D&A),Rules,1972. The first set of charges were framed on 22.02.2001, for the alleged occurrence referable to the period 1986-1988. The petitioner had submitted his explanation on 21.03.2001, denying the charges. An enquiry had been conducted and the Enquiry Officer had also submitted his report. However, no action had been taken thereafter. The second set of charges were framed on 17.10.1997 for the alleged occurrence that was to have taken place during the years 1991-1994. An explanation was submitted by the petitioner on 25.02.1998. The first Enquiry Officer in his report, dated 20.08.1989 had held that the charges were not proved. Thereafter, a de-novo enquiry was conducted and the second Enquiry Officer had submitted his report. However, no further action had been taken. It has been stated that the promotion to the petitioner was denied based on G.O.Ms.No.368, dated 18.10.1993, and the guidelines issued thereunder. It has been pointed out by the learned counsel appearing on behalf of the petitioner that by G.O.Ms.No.262, Housing and Urban Development (SC2-2) Department, dated 30.06.2004, It has been stated as follows:-

> "5. The Government after carefully and independently examined the case with the connected records. They have decided to accept the findings of the Enquiry Officer as the charges are not held as proved except charges 6 & 7. However, the Government have taken a lenient view and direct to let him off with censure."

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Thereafter, on 14.07.2004, a final order had been passed in proceedings No.J1/22871/1997, in which the petitioner has been awarded with the punishment "Let off with severe warning" based on the resolution of the Board, dated 28.04.2004. Thereafter, an order had been passed in proceedings No.J1/9143/2003, dated 16.11.2004, according to which the petitioner had been temporarily promoted as an Executive Engineer.

5.In the counter affidavit filed by the respondent, it has been stated that according to G.O.Ms.No.368, P&A.R Dept. dated 18.10.1993, and the guidelines issued in Government Letter No.248 P&A R (S) Department, dated 20.10.1997, it was laid down that whenever an officer was undergoing a punishment and during the currency of punishment on the crucial date his name should be passed over at the time of first consideration irrespective of the time of occurrence of irregularity. If the currency of that punishment continues at the time of subsequent consideration for the next panel then his name may be included in the panel, on the basis that a name should not be passed over for the second time on account of the same punishment. It had also been submitted that the petitioner's name could not be included in the panel for promotion to the post of Executive Engineer on three occasions due to the pendency of three different sets of charges on the crucial dates of consideration. However, during the month of October,2004, by a Board resolution, dated 29.10.2004, the petitioner's name was selected and included in the panel for the year 2004 for being promoted as an Executive Engineer. Accordingly, the petitioner was promoted as an Executive Engineer by way of proceedings No.J1/9143/2003, dated 16.11.2004.

6.From the records placed before this Court, it is clear that the charges had been framed against the petitioner on various grounds and his name could not be considered for being included in the panel for promotion as an Executive Engineer based on G.O.Ms.No.368, dated 18.10.1993. It is also seen that the petitioner had neither challenged the charges framed against him nor the punishment awarded to him, after the enquiry proceedings were concluded. However, the petitioner had only challenged the proceedings No.J1/9143/2003, dated 08.04.2003, of the respondent. It is stated that the petitioner's name had been included in the panel for promotion in the month of October,2004, and he has been promoted as an Executive Engineer.

In such circumstances, this Court is of the considered view that the prayer sought for by the petitioner cannot be granted, as no case has been made out for such indulgence by this Court. Therefore, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar.

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To

The Chairman,
Tamilnadu Slum Clearance Board,
Chennai - 600 005

+ One cc to Mr. R. Muthukannau Advocate SR 5378

KG (co)

sg 6/2/07

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